



PUBLIC NOTICE

Federal Communications Commission
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DA 03-721
March 11, 2003

Wireless Telecommunications Bureau Seeks Comment on Petition Filed by AirCell, Inc. for Extension of Waiver

Docket No. 02-86

Comments Due: April 10, 2003

Reply Comments Due: April 25, 2003

On March 28, 2002, AirCell, Inc. and its cellular licensee partners (AirCell) filed a petition requesting that the Commission extend its waiver of Section 22.925 of the Commission's rules, 47 C.F.R. § 22.925.¹ On April 23, 2002, the Wireless Telecommunications Bureau (Bureau) released a public notice seeking comment on AirCell's request and setting deadlines of May 15, 2002 for comments and May 28, 2002 for replies.² A number of cellular carriers opposed to AirCell's waiver filed a motion³ seeking to suspend that comment cycle until the Commission issued an order in response to the remand by the Court of Appeals for the District of Columbia Circuit in a case involving the existing waiver grant to AirCell and its partners.⁴ On May 3, 2002, the Bureau issued an order suspending the above pleading cycle until after the Commission dealt with the Court's remand.⁵ In addition, the Bureau temporarily extended AirCell's waiver under its existing terms in order that the waiver not expire before the Bureau could consider the record to be compiled in response to the request to extend the waiver. The

¹ In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling (filed March 28, 2002).

² *Wireless Telecommunications Bureau Seeks Comment on Petition Filed by AirCell, Inc. for Extension of Waiver*, Public Notice, DA 02-949, April 23, 2002 (WTB).

³ Motion to Suspend Comment Dates Pending Prompt Action on Remand (Motion), filed by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (Petitioners), April 26, 2002.

⁴ *AT&T Wireless Services Inc. v. FCC*, 270 F.3d 959 (D.C. Cir. 2001), *petition for rehearing denied* January 29, 2002.

⁵ In the Matter of AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order*, DA 02-1028, May 3, 2002 (WTB) (Pleading Suspension PN).

Commission has now issued its *Order on Remand*.⁶ Therefore, the Bureau now reinstates its request for comments on AirCell's petition to extend its waiver.

Pursuant to the current waiver of Section 22.925, AirCell operates a system using cellular telephone equipment specially designed to provide service to customers on board aircraft without causing harmful interference to terrestrial cellular systems. The Bureau originally issued a waiver to AirCell on December 24, 1998, which permitted operation on six analog channel pairs at any given ground station for a period of two years.⁷ The Commission upheld the waiver and extended the expiration date of the original waiver to June 9, 2002.⁸

In its request, AirCell states that extension of both the waiver period and the scope of the waiver is necessary for the continued provision of a service that is in the public interest. AirCell contends that the standard for issuance of a waiver is met in this case by the special circumstances presented, *i.e.*, the use of equipment specifically designed to avoid the harmful interference that is the underlying purpose of the rule.⁹ AirCell also states that the grant of its request would allow it to provide additional services, including provision of real-time weather and air-traffic data, emergency communications, cockpit and cabin monitoring, and passenger communications. Specifically, AirCell requests that: 1) the waiver period be extended to allow operation indefinitely, or, in the alternative, for a period of ten years; 2) AirCell and its partners be permitted to operate on up to 19 cellular channel pairs per ground station rather than the currently authorized six pairs; and 3) they be authorized to operate on channels used by carriers for digital terrestrial cellular operations.

We seek comment on whether granting AirCell's request would further the public interest. Parties wishing to file comments must do so on or before April 10, 2003. Reply comments must be filed on or before April 25, 2003. All comments should reference AirCell's waiver request, and include the DA number of this Public Notice, DA 03-721.

The Petition is available for public inspection and copying in the Commission's Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554. Copies of the Petition are also available from Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com. Copies of the Petition also may be obtained via the Commission's Electronic Comment Filing System (ECFS), which is accessible at <http://www.fcc.gov/e-file/ecfs.html>, by entering the Docket Number of this proceeding, Docket No. 02-86.

⁶ In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order on Remand*, FCC 02-324 (rel. February 10, 2003).

⁷ See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd. 806 (WTB 1998), recon. granted in part, denied in part, 14 FCC Rcd. 19430 (WTB 1999).

⁸ See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, 15 FCC Rcd. 9622 (2000), *pet. for review granted in part, denied in part, sub nom.* AT&T Wireless Services, Inc., v. FCC, 270 F.3d 959 (D.C. Cir. 2001). As noted above, the waiver continues in force as a result of the Bureau's *Pleading Suspension PN*.

⁹ See 47 C.F.R. § 1.925(a)(3).

Under the Commission's current procedures for the submission of filings and other documents,¹⁰ submissions in this matter may be filed electronically by ECFS or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**¹¹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must also be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (2) 863-2898 (facsimile); (2) Leon Jackler, Commercial Wireless Division, Wireless Telecommunications Bureau, at ljackler@fcc.gov, or (202) 418-7447 (facsimile).

For further information, contact Leon Jackler, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0946.

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¹⁰ See *In the Matter of Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001).

¹¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).